IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2240 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

MADHUKANTA RAMESHCHANDRA

Versus

DHIRAJLAL DHANJIBHAI CHIKSI

Appearance:

MR VJ DESAI for Petitioner

MR SH SANJANWALA for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/07/98

ORAL JUDGEMENT

1. This is landlord's revision under Section 29(2) of the Bombay Rent Act, 1947.

2. Brief facts are that the plaintiff revisionist being the owner - landlord of the disputed premises let

out the same to the defendant - respondent on monthly rent of Rs.42.75 ps. The rent fell due since 1.8.1974 to 31.12.1976. Notice of demand dated 27.11.1976 was served. The notice remained uncomplied with hence Suit for eviction was filed. Eviction was sought on three grounds. Firstly that the tenant was in arrears of rent for more than six months which he failed to pay within a month of service of notice of demand. The second ground was that the tenant did not use the premises for residential purpose for which it was let out for a period exceeding six months continuously before institution of the Suit and the third was that the tenant had acquired alternative suitable accommodation at Bombay.

3. The respondent resisted the Suit on the ground that the respondent and his brother Babulal took the premises on rent since 1959 from the previous landlord and the rent was paid by the brother of the defendant - respondent and both brothers were living together in the premises in suit. It was thus pleaded that Babulal is also tenant in the Suit premises. Dispute regarding standard rent was also raised. It was denied that the premises was not used for a continuous period of six months preceeding the date of the Suit. He admitted that he had shifted to Bombay in the year 1966, but his brother Babulal continued to reside in the Suit premises along with his family members and he did not acquire any vacant and suitable accommodation for himself. The accommodation at Bombay is said to be unsuitable for the defendant respondent.

4. The trial Court found that the defendant respondent alone was tenant and not that his brother Babulal was also tenant. It was found by the trial Court that none of the three grounds for eviction could be established by the landlord. Accordingly the Suit for eviction was dismissed.

5. An appeal was filed which too was dismissed. Hence this revision.

6. No doubt it is a case of concurrent findings recorded by the two Courts below on all the three grounds for eviction of the tenant, but merely because it is a case of concurrent finding the scope of interference in revision in a special case like this cannot be said to be remote. Even in cases of concurrent finding where the appellate Court has gone beyond its jurisdiction in deciding the question as to who is tenant and also in taking up a new case not pleaded by the parties then certainly this error of jurisdiction is a ground for

interference in such revision. Misreading of evidence or recording finding on surmises and conjectures not based on evidence on record are also grounds for interference in such revision.

7. The first illegality which renders the judgment of the lower Appellate Court contrary to law is that without any cross objection on the finding recorded by the trial Court on Issue No.5 the Appellate Court has recorded a finding that besides the defendant - respondent his brother Babulal was also a tenant. The finding of the trial Court on Issue No.5 could be set aside only on cross objection filed by the respondent. No cross objection was filed by the respondent on finding recorded by the trial Court on Issue No.5. Thus, the lower Appellate Court was not legally entitled to reverse the finding of the trial Court on this issue without cross objection.

8. The question as to who is tenant is a pure question of fact which was answered by the trial Court after considering the relevant material on record and also admission of the defendant. No doubt the defendant pleaded that his brother was also a tenant, but he made certain admissions in the witness box giving up his earlier case taken in the written statement. Admission is the best piece of evidence against the party making it and unless it is proved or shown that such admission was the result of some confusion or error or it was erroneous admission it can be used against maker of such admission. No explanation has been offered by the tenant respondent that the admission made by him was erroneous. The trial Court observed that the defendant admitted that he was paying rent to previous landlord who was issuing receipt in his name, viz. in the name of the defendant. He further admitted in cross examination that he is tenant of the suit premises and rent receipts are in his name. On these admissions the trial Court was perfectly justified in holding that the defendant alone was the tenant.

9. As mentioned earlier this finding could not be reversed by the Appellate Court without any cross objection being filed by the tenant. The lower Appellate Court therefore committed patent illegality in reversing this finding. Further the reversal of finding by the Appellate Court is again illegal inasmuch as it is based on misreding of evidence. Much emphasis was laid by the Appellate Court on receipt Ex.40 alleged to have been issued in the name of Babulal. However, the record shows that Ex.40 is not any receipt of rent in the name of

Babulal. On the other hand it is a diary in which the account of the defendant is noted by the landlord. The relevant entry shows that a debit entry of Rs.80/- was made in this diary. Simply because the name of Babulal is mentioned against debit entry such debit entry neither becomes a rent receipt nor is a document admitting that Babulal was also tenant. The debit entry of Rs.80/- is more confusing. If the rent was Rs.42.75 ps. per month and if two months rent were due then the debit entry should have been Rs.85.50 ps. and not Rs.80/-. More over in this entry there is no mention of premises number nor is there any specific mention that it was debit entry of rent from Babulal. Thus, on the basis of this entry the lower Appellate Court by misreading evidence has recorded unwarranted and uncalled for finding that Babulal is also tenant.

10. It was nobody's case that initially the tenancy was created for joint family of the defendant and his brother. The lower Appellate Court made out new case on this point and gave abrupt finding that the tenancy was for the joint family. The lower Appellate Court also gave contradictory finding that by subsequent event Babulal became the tenant. When such is the state of affairs this finding of the lower Appellate Court is patently erroneous and contrary to law and as such is liable to be set aside in this revision and is accordingly set aside. The finding of the trial Court that the defendant alone is tenant is confirmed.

11. The finding of the trial Court that the tenant was not in arrears of rent for more than six months and that no decree for eviction could be passed under Section 12(3)(a) is a finding of fact. The lower Appellate Court also concurred with this finding. Hence no interference on this finding is required. The landlord is therefore not entitled to evict the respondent under Section 12(3)(a) of the Rent Act.

12. The landlord is also claiming eviction of the tenant on the ground that the tenant has acquired suitable alternative accommodation at Bombay. It is admitted by the respondent that he acquired one room for his residence at Bombay and has shifted there along with his family in the year 1966 and is residing there and is also carrying on business at Bombay. It is not his case that he had been coming to Surat where the property is situated for casually residing with his brother. Thus, for all purpose the tenant has shifted to the alternative accommodation obtained by him at Bombay. The question is whether this acquisition of alternative accommodation can

be ground for tenants eviction or not. For this two things have to be seen. The first is whether the accommodation at Bombay is suitable and sufficient for the purposes of tenant's family. It is the duty of the Court while passing decree for eviction on this ground to record a finding that such alternative accommodation is sufficient for the requirement of the tenant. No specific finding has been given on the point by the Courts below, but in the circumstances of the case and also from the evidence on record it transpires that three rooms were let out to the defendant at Surat in the disputed accommodation. Since 1966 the respondent is residing in one room at Bombay along with his family. An inference can therefore be drawn that if the tenant is residing at Bombay along with his family in one room it is sufficient accommodation for the purpose of his residence and residence of his family member. A person might have taken on lease three rooms at a smaller place like Surat, but if he obtained one room at Bombay and if he is confortably lodged there it can be said that the said room is sufficient accommodation for the purposes of the tenant.

13. The next point for consideration is whether the view of the two Courts below that because Babulal, viz. brother of the defendant along with his family members is residing in the disputed accommodation and Babulal has no alternative accommodation it can be said that the tenant has not acquired suitable alternative accommodation is correct. This view also appears to be patently erroneous. Section 13(1)(l) of the Bombay Rent Act provides that if the tenant has built acquired vacant possession of or been allotted suitable residence elsewhere is liable to be evicted by the landlord. The question is whether brother of the tenant is to be treated as family member of the tenant. By no stretch of imagination the brother of the tenant can be considered to be the family member of the tenant. Thus, if he is residing along with his family in the disputed accommodation it can not be said that the accommodation acquired by the tenant in Bombay is insufficient for his purpose. Thus, the ingredient of Section 13(1)(l) has been fully established by the landlord and both the courts below committed menifest error of law in refusing to pass decree on this ground.

14. The landlord is therefore entitled to evict the tenant respondent on this very ground.

15. The landlord has also sought tenant's eviction on another ground that he had not used the premises for the purpose for which it was let out for a continous period

of six months immediately preceeding the filing of the suit. This is in fact the ground contained in Section 13(1)(k) of the Act. On this point the view taken by the two courts below is that because Babulal along with his family is residing in the accommodation in dispute, it cannot be said that the tenant had not used the premises for the purpose for which it was let out. This view also seems to be contrary to Section 13(1)(a) of the Act. Section 13(1)(a) provides that the landlord shall be entitled to recover possession of any premises if the court is satisfied that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceeding the date of the Suit. Continuous user of the premises for six months in this section means user of the premises by the tenant or by his family members. Since it is established from the record that since 1966 neither the tenant nor his family members are residing in this premises hence it can safely be concluded that the premises was not used without reasonable cause by the tenant for a continuous period of six months immediately preceeding the date of the Suit. Occupation of the property by the brother of the tenant who has no right to stay in the premises cannot amount to user of the premises by the tenant for the purpose for which it was let out to him. Thus, Section 13(1)(k) is also attracted in the instant case and the view to the contrary taken by the two Courts below is also contrary to law. The Decree for eviction can be passed on this ground also. As such revisional interference is totally justified. The revision therefore has merit and deserves to be allowed.

16. The revision is accordingly allowed. The Judgments and Decrees of the two Courts below refusing the Decree for eviction to the landlord revisionist are set aside. The Suit of the revisionist for eviction of the respondent from the Suit accommodation is hereby decreed. The decree for arrears of rent passed by the trial Court is maintained. The revisionist shall be entitled to mesne profits pendent-lite and future at the rate of Rs.42.75 ps. till final eviction of the respondent on payment of additional court fees on the execution side. Cost of this revision, Suit and Appeal shall be easy.

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